

PAUL L. REIN, Esq. (SBN 43053)
CELIA MCGUINNESS, Esq. (SBN 159420)
CATHERINE M. CABALO, Esq. (SBN 248198)
LAW OFFICES OF PAUL L. REIN
200 Lakeside Drive, Suite A
Oakland, CA 94612
Telephone: 510/832-5001
Facsimile: 510/832-4787
reinlawoffice@aol.com

Attorneys for Plaintiff
BONNIE REGINA

* List of Defendants and their respective counsel listed after the caption.

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

BONNIE REGINA,
Plaintiff,

CASE NO. C09-5362 SBA
Civil Rights

v.

HUNTMONT MEDICAL BUILDING,
A CALIFORNIA LIMITED
PARTNERSHIP; QUEST
DIAGNOSTICS CLINICAL
LABORATORIES, INC.; and DOES
1-10, Inclusive,
Defendants.

**CONSENT DECREE AND
[PROPOSED] ORDER AS TO
INJUNCTIVE RELIEF ONLY**

MELISSA WOOD EISENBERG, Esq. (SBN 197399)
MURCHISON & CUMMING LLP
2010 Crow Canyon Place, Suite 380
San Ramon, CA 94583
Telephone: 925/365-3170
Facsimile: 925/365-3180
meisenberg@murchisonlaw.com

Attorneys for Defendant:
HUNTMONT MEDICAL BUILDING

STEVEN R. BLACKBURN, Esq. (SBN 154797)
ANDREW J. SOMMER, Esq. (SBN 192844)
BROOKE A. BROWN, Esq. (SBN 242815)
EPSTEIN BECKER & GREEN, P.C.

1 One California Street, 26th Floor
2 San Francisco, CA 94111-5427
3 Telephone: 415/398-3500
4 Facsimile: 415/398-0955
5 sblackburn@ebglaw.com
6 asommer@ebglaw.com
7 bbrown@ebglaw.com

8 Attorneys for Defendant:
9 QUEST DIAGNOSTICS CLINICAL
10 LABORATORIES, INC.

11 1. Plaintiff BONNIE REGINA filed a Complaint in this action on
12 November 13, 2009, to obtain recovery of damages for her discriminatory
13 experiences, denial of access, and denial of his civil rights, and to enforce
14 provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C.
15 §§ 12101 *et seq.*, and California civil rights laws against Defendants
16 HUNTMONT MEDICAL BUILDING ("Huntmont") and QUEST
17 DIAGNOSTICS CLINICAL LABORATORIES, INC. ("Quest") (together
18 collectively "Defendants"), relating to the condition of Defendants' public
19 accommodations as of April 29, 2009, and continuing. Plaintiff has alleged that
20 Defendants violated Title III of the ADA and sections 51, 52, 54, 54.1, 54.3 and
21 55 of the California Civil Code, and sections 19955 *et seq.* of the California
22 Health & Safety Code by failing to provide full and equal access to their facilities
23 at 2999 Regent Street, Berkeley, California.

24 2. Plaintiff and Defendants (together sometimes the "Parties") hereby
25 enter into this Consent Decree and Order for the purpose of resolving injunctive
26 relief aspects of this lawsuit without the need for protracted litigation. Issues of
27 damages and attorney fees, costs and expenses will be the subject of further
28 negotiations and litigation if necessary.

29 JURISDICTION:

30 3. The Parties to this Consent Decree and Order agree that the Court has
jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations

1 of the Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.*
 2 and pursuant to supplemental jurisdiction for alleged violations of California
 3 Health & Safety Code sections 19955 *et seq.*; Title 24, California Code of
 4 Regulations; and California Civil Code sections 51, 52, 54, 54.1, 54.3, and 55.

5 4. In order to avoid the costs, expense, and uncertainty of protracted
 6 litigation, the Parties to this Consent Decree and Order agree to entry of this
 7 Consent Decree and Order to resolve all claims regarding injunctive relief raised
 8 in the Complaint filed with this Court. Accordingly, the Parties agree to the entry
 9 of this Order without trial or further adjudication of any issues of fact or law
 10 concerning Plaintiff's claims for injunctive relief.

11 WHEREFORE, the Parties to this Consent Decree hereby agree and
 12 stipulate to the Court's entry of this Consent Decree and Order, which provide as
 13 follows:

14
 15 **SETTLEMENT OF INJUNCTIVE RELIEF:**

16 5. This Order shall be a full, complete, and final disposition and
 17 settlement of Plaintiff's claims against Defendants for injunctive relief that have
 18 arisen out of the subject Complaint. The Parties agree that there has been no
 19 admission or finding of liability or violation of the ADA and/or California civil
 20 rights laws, and this Consent Decree should not be construed as such.

21 6. The Parties agree and stipulate that the corrective work will be
 22 performed in compliance with the standards and specifications for disabled access
 23 as set forth in the California Code of Regulations, Title 24-2, and Americans with
 24 Disabilities Act Accessibility Guidelines, unless other standards are specifically
 25 agreed to in this Consent Decree and Order.

26 a) **Remedial Measures:** The corrective work agreed upon by the
 27 Parties is set forth in **Attachment A**, to be completed by Huntmont, and
 28 **Attachment B**, to be completed by Quest, attached and incorporated herewith.

1 Defendants agree to undertake all of the respective remedial work as set forth
2 therein.

3 b) **Timing of Injunctive Relief:** Defendant Huntmont will
4 submit plans for all corrective work to the appropriate governmental agencies if
5 necessary within 90 days of the entry of this Consent Decree by the Court.
6 Defendant Huntmont will commence work within 30 days of receiving approval
7 from the appropriate agencies. Defendant Huntmont will complete all items
8 identified in **Attachment A** within 1 year of the commencement of work.
9 Defendant Huntmont will also provide Plaintiff with a status report detailing the
10 status of work described **Attachment A** within nine months of the commencement
11 of work. Defendant Quest will submit plans for all corrective work to the
12 appropriate governmental agencies if necessary within 90 days of the entry of this
13 Consent Decree by the Court. Defendant Quest will commence work within 60
14 days of receiving approval from the appropriate agencies. Defendant Quest will
15 complete work related to the reception counter and provide an adjustable patient
16 examination table within four months of commencement of work. Defendant
17 Quest will complete all remaining items identified in **Attachment B** within six
18 months of the commencement of work. In the event that unforeseen difficulties
19 prevent Defendants from completing any of the agreed-upon injunctive relief,
20 Defendants or their counsel will notify Plaintiff's counsel in writing within 15
21 days of discovering the delay. Defendants or their counsel will notify Plaintiff's
22 counsel when the corrective work is completed, and in any case each Defendant
23 will provide Plaintiff with a status report no later than 120 days from the entry of
24 this Consent Decree.

25 c) Defendants will notify Plaintiff in writing at the end of 120
26 days from the Parties' signing of this Consent Decree and Order as to the current
27 status of agreed-to injunctive relief, and every 90 days thereafter until all access is
28 provided. If any Defendant fails to provide injunctive relief on the agreed to

1 timetable and/or fails to provide timely written status notification, and Plaintiff
 2 files a motion with the Court to obtain compliance with these terms, Plaintiff
 3 reserves the right to seek additional attorney fees from that Defendant for all
 4 compliance work necessitated by its failure to keep this agreement. However, the
 5 Parties will negotiate in good faith for 30 days to resolve their differences, and the
 6 Parties may mutually agree to extend this negotiation period. Plaintiff will refrain
 7 from filing a motion to obtain compliance until after this negotiation period is
 8 complete.

9
 10 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES AND COSTS:**

11 7. The Parties have not reached any agreement regarding Plaintiff's
 12 claims for damages, attorneys fees, litigation expenses and costs. These matters
 13 will be the subject of future negotiation or litigation as necessary. The Parties
 14 jointly stipulate and request that the Court not dismiss the case as these significant
 15 issues remain unresolved.

16
 17 **ENTIRE CONSENT DECREE AND ORDER:**

18 8. This Consent Decree and Order constitute the entire agreement
 19 between the signing Parties on the matters of injunctive relief, and no other
 20 statement, promise or agreement, either written or oral, made by any of the Parties
 21 or agents of any of the Parties that is not contained in this written Consent Decree
 22 and Order shall be enforceable regarding the matters of injunctive relief described
 23 herein. This Consent Decree and Order applies to Plaintiff's claims for injunctive
 24 relief only and does not resolve Plaintiff's claims for damages, attorney fees,
 25 litigation expenses and costs, which shall be the subject of further negotiation
 26 and/or litigation. The Parties stipulate that all Parties request that the Court not
 27 dismiss the case, as issues of statutory damages, attorney fees, litigation expenses,
 28 and costs are still before the Court.

1 CONSENT DECREE AND ORDER BINDING ON PARTIES AND
2 SUCCESSORS IN INTEREST:

3 9. This Consent Decree and Order shall be binding on Plaintiff,
4 Defendants, and any successors in interest. Defendants have a duty to so notify all
5 such successors in interest of the existence and terms of this Consent Decree and
6 Order during the period of the Court's jurisdiction of this Consent Decree and
7 Order.

8
9 MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS
10 TO INJUNCTIVE RELIEF ONLY:

11 10. Each of the Parties to this Consent Decree and Order understands and
12 agrees that there is a risk and possibility that, subsequent to the execution of this
13 Consent Decree and Order, any or all of them will incur, suffer or experience some
14 further loss or damage with respect to the lawsuit that is unknown or unanticipated
15 at the time this Consent Decree and Order is signed. Except for all obligations
16 required in this Consent Decree and Order, the Parties intend that this Consent
17 Decree and Order apply to all such further loss with respect to the lawsuit, except
18 those caused by the Parties subsequent to the execution of this Consent Decree and
19 Order. Therefore, except for all obligations required in this Consent Decree and
20 Order, this Consent Decree and Order shall apply to and cover any and all claims,
21 demands, actions and causes of action by the Parties to this Consent Decree with
22 respect to the lawsuit, whether the same are known, unknown or hereafter
23 discovered or ascertained, and the provisions of Section 1542 of the California
24 Civil Code are hereby expressly waived. Section 1542 provides as follows:

25 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
26 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
27 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
28 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**

**OR HER MUST HAVE MATERIALLY AFFECTED HIS
SETTLEMENT WITH THE DEBTOR.**

This waiver applies to the injunctive relief aspects of this action only and does not include resolution of Plaintiff's claims for damages, attorney fees, litigation expenses and costs.

11. Except for all obligations required in this Consent Decree and Order – and exclusive of the referenced continuing claims for damages, statutory attorney fees, litigation expenses and costs – each of the Parties to this Consent Decree and Order, on behalf of each, their respective agents, representatives, predecessors, successors, heirs, partners and assigns, releases and forever discharges each other Party and all officers, directors, shareholders, subsidiaries, joint venturers, stockholders, partners, parent companies, affiliated companies, employees, agents, attorneys, insurance carriers, heirs, predecessors, and representatives of each other Party, from all claims, demands, actions, and causes of action of whatever kind or nature, presently known or unknown, arising out of or in any way connected with the lawsuit.

TERM OF THE CONSENT DECREE AND ORDER:

12. This Consent Decree and Order shall be in full force and effect for a period of eighteen (18) months after the date of entry of this Consent Decree and Order by the Court, or until the injunctive relief contemplated by this Order is completed, whichever occurs later. The Court shall retain jurisdiction of this action to enforce provisions of this Consent Decree and Order for eighteen (18) months after the date of entry of this Consent Decree and Order by the Court, or until the injunctive relief contemplated by this Order is completed, whichever occurs later.

SEVERABILITY:

13. If any term of this Consent Decree and Order is determined by any court to be unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in full force and effect.

SIGNATORIES BIND PARTIES:

14. Signatories on the behalf of the Parties represent that they are authorized to bind the Parties to this Consent Decree and Order. This Consent Decree and Order may be signed in counterparts and a facsimile signature shall have the same force and effect as an original signature.

END OF PAGE.

**SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT
THE END OF THE DOCUMENT.**

1 Dated: _____, 2011

PLAINTIFF BONNIE REGINA

2
3
4 _____
5 BONNIE REGINA

6
7 Dated: _____, 2011

DEFENDANT HUNTMONT MEDICAL
BUILDING

8
9
10 By: _____

11 Print name: _____

12 Title: _____

13
14 Dated: _____, 2011

DEFENDANT QUEST DIAGNOSTICS
CLINICAL LABORATORIES, INC.

15
16
17 By: _____

18 Print name: _____

19 Title: _____

20
21
22 APPROVED AS TO FORM:

23
24
25 Dated: March 7, 2011

LAW OFFICES OF PAUL L. REIN

26 _____
27 /s/ Catherine M. Cabalo
By: Catherine M. Cabalo, Esq.
Attorneys for Plaintiff
28 BONNIE REGINA

1 Dated: February 1, 2011

EPSTEIN BECKER & GREEN, P.C.

2
3 /s/ Andrew J. Sommer

4 By: Andrew J. Sommer, Esq.
5 Attorneys for Defendant
6 QUEST DIAGNOSTICS CLINICAL
7 LABORATORIES, INC.

8
9 Dated: February 16, 2011

MURCHISON & CUMMING, LLP


10 /s/ Melissa Wood Eisenberg

11 By: Melissa Wood Eisenberg, Esq.
12 Attorneys for Defendant
13 HUNTMONT MEDICAL BUILDING
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

Dated: 3/17/11


Honorable SAUNDRA B. ARMSTRONG
United States District Judge